

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:01-CR-00095-F-1
No. 7:16-CV-00094-F

KEVIN L. FARMER,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

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ORDER

This matter is before the court on Kevin L. Farmer's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [DE-46]. The issues have been fully briefed, and the matter is now ripe for ruling. For the reasons more fully stated below, Farmer's Motion to Vacate is ALLOWED.

In Farmer's Motion to Vacate, he argues that he is no longer an armed career criminal as a result of *Johnson v. United States*, 135 S. Ct. 2551 (2015). Mot. Vacate [DE-46] at 5. In particular, Farmer contends that his North Carolina convictions for taking indecent liberties with a minor are no longer valid predicate convictions for the Armed Career Criminal Act ("ACCA"). *Id.* The Government agrees that pursuant to the Supreme Court's decision in *Johnson*, 135 S. Ct. at 2551 (invalidating the residual clause of the ACCA, 18 U.S.C. § 924(e)(2)(B)(ii)), Farmer's sentence as to Count Three exceeds the statutory maximum. Resp. [DE-50] at 2.

In light of the foregoing, including the Government's concessions, Farmer's Motion to Vacate [DE-46] is ALLOWED. Farmer's December 11, 2001 Judgment [DE-12] of conviction and sentence hereby is VACATED, and he is to be promptly resentenced without the 18 U.S.C.

§ 924(e) enhancement.¹

SO ORDERED.

This, the 16 day of June, 2016.

James C. Fox
JAMES C. FOX
Senior United States District Judge

¹ The Government argues in favor of merely “correcting” Farmer’s sentence on Count Three without a full resentencing hearing. Resp. [DE-50] at 2-3. The court declines to take that route. Rather, the court will schedule a resentencing hearing during which the parties can argue the appropriate sentence to the court.